

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Kojo Worldwide Corporation	)	File Number: EB-04-SD-187
San Diego, California	)	NAL/Acct. No.: 200532940005
	)	FRN: 0011163516
	)	
More Enterprises Communications Network, Inc.	)	File Number: EB-05-SD-011
San Diego, California	)	NAL/Acct. No.: 200532940008
	)	FRN: 0010901734
	)	
Uniradio Corporation	)	File Number: EB-05-SD-010
San Diego, California	)	NAL/Acct. No.: 200532940013
	)	FRN: 0010621829
	)	
Anderson Desk Company	)	File Number: EB-05-SD-031
San Diego, California	)	NAL/Acct. No.: 200532940002
	)	FRN: 0009980855

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 29, 2009**

**Released: December 29, 2009**

By the Commission:

**I. INTRODUCTION**

1. The Commission has before it four applications for review filed by Kojo Worldwide Corporation (“Kojo”), More Enterprises Communications Network, Inc. (“More”), Uniradio Corporation (“Uniradio”) and Anderson Desk Company (“Anderson Desk”) (collectively “the Petitioners”)<sup>1</sup> of forfeiture orders (“*Forfeiture Orders*”) issued by the Western Region, Enforcement Bureau (“Region”).<sup>2</sup> In the *Forfeiture Orders*, each of the Petitioners was assessed a \$10,000 forfeiture for willfully and repeatedly operating an unlicensed microwave radio station, in violation of Section 301 of the Communications Act of 1934, as amended (“Act”).<sup>3</sup> All four of the applications for review raise the same

<sup>1</sup> Application for Review of Kojo Worldwide Corporation, filed September 22, 2006 (“Kojo Application for Review”); Application for Review of More Enterprises Communications Network, Inc., filed September 22, 2006 (“More Application for Review”); Application for Review of Uniradio Corporation, filed October 12, 2006 (“Uniradio Application for Review”); Application for Review of Anderson Desk Company, filed September 22, 2006 (“Anderson Application for Review”).

<sup>2</sup> *Kojo Worldwide Corporation*, 21 FCC Rcd 9538 (EB 2006); *More Enterprises Communications Network, Inc.*, 21 FCC Rcd 9548 (EB 2006); *Uniradio Corporation*, 21 FCC Rcd 9993 (EB 2006); *Anderson Desk Company*, 21 FCC Rcd 9543 (EB 2006).

<sup>3</sup> 47 U.S.C. § 301.

issues; therefore, we consider them together.<sup>4</sup> For the reasons described below, we deny the applications for review.

## II. BACKGROUND

2. Beginning in November 2004, and continuing through March 2005, agents from the San Diego Office of the Commission's Enforcement Bureau investigated allegations that companies in the Otay Mesa area of San Diego, California, were using unauthorized microwave radio stations to communicate with sister companies across the U.S. – Mexico border in Tijuana, Mexico.<sup>5</sup> During that time, San Diego agents monitored and measured the transmissions of a microwave radio station used by Kojo, at 9654 Siempre Viva Road, San Diego, California, operating on microwave channels 22355.0 MHz and 22471.75 MHz; a microwave radio station used by More, at 4630 Border Village Road, San Diego, California, operating on microwave channels 21675.0 MHz and 22471.75 MHz; a microwave radio station used by Uniradio at 4630 Border Village Road, San Diego, California, operating on microwave channels 21225.0 MHz and 22464.75 MHz; and a microwave radio station used by Anderson Desk, at 7510 Airway Road, San Diego, California, operating on microwave channel 21224.0 MHz. A review of the Commission's databases revealed that each of the Petitioners had a pending application, all filed in 2004, for a frequency within the 23 GHz band, but not necessarily the one they were using. None of these applications had been granted and, consequently, none of these operations were licensed by the Commission.<sup>6</sup>

3. The San Diego Office issued a Notice of Unlicensed Operation ("NOUO") to Kojo on December 17, 2004. In a reply, dated December 27, 2004 ("NOUO Reply"), the counsel for Kojo stated that Kojo attempted to apply for a microwave radio station license in 2001. During this same time period, Kojo's counsel had another client who attempted to apply for a microwave radio station license in the same area in order to communicate with a sister office in Mexico. According to Kojo's counsel, this other client attempted to obtain a Special Temporary Authority ("STA") but was not granted one.<sup>7</sup> In the NOUO Reply, counsel for Kojo stated that he was orally advised by the Commission's International

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<sup>4</sup> Because the issues raised in these applications for review are identical, we have consolidated our consideration of these issues and Petitioners into this single Memorandum Opinion and Order. Each of the Petitioners, however, remains liable only for its individual forfeiture amount, see ¶¶ 14 - 23, below.

<sup>5</sup> See, e.g., *Lamkin Corporation*, 21 FCC Rcd 9568 (EB 2006); *Pacnet Incorporated San Diego (Otay), California*, 21 FCC Rcd 10089 (EB 2006); *Pacnet Incorporated San Diego (San Ysidro), California*, 21 FCC Rcd 10087 (EB 2006); *Norman Krieger* 21 FCC Rcd 9563 (EB 2006); *Pacific Spanish Network, Inc.*, 21 FCC Rcd 2073 (EB 2006); *International Customs Brokers, Inc.*, 21 FCC Rcd 2077 (EB 2006); *Tocabi America Corporation*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200532940006 (Enf. Bur., Western Region, San Diego Office, released September 28, 2005).

<sup>6</sup> At the time of the inspections, Kojo had a pending application for license, filed November 1, 2004, for operation on 22471.75 MHz for the 9654 Siempre Viva Road transmitter site; More had a pending application for license, filed September 2, 2004, for 22471.75 MHz at the 4630 Border Village Road location; Uniradio had a pending application for license, filed May 19, 2004 and amended September 29, 2004, for 22464.75 MHz at the 4630 Border Village Road location; and Anderson Desk had a pending application for license, filed September 23, 2004, for 22461.25 MHz at the 7510 Airway Road location. Pursuant to Sections 101.31(b)(1) and 101.31(b)(1)(v) of the Rules, 47 C.F.R. §§ 101.31(b)(1), 101.31(b)(1)(v), certain applicants for point-to-point microwave stations, not located within 56.3 kilometers of any international border, operating in certain frequency bands, are deemed to have conditional authority to operate their proposed stations during the pendency of their applications. These rule provisions for conditional authority, however, do not apply to the operations at issue here, as some of the frequencies proposed for use by Petitioners in their applications were not contained in these frequency bands, and each one of the proposed stations was located too close to an international border (specifically, no more than 1.5 km from the Mexican border) to qualify for conditional authority.

<sup>7</sup> The other client was Pacific Devices, Inc. See Kojo NOUO Reply at 2.

Bureau that “(1) it would not be issuing any more STA’s, and (2) there would be no further enforcement actions initiated by field offices regarding unlicensed cross-border 23 GHz systems.”<sup>8</sup> Kojo’s counsel then stated that he gave this advice to Kojo as well.<sup>9</sup> Kojo apparently began its operations in 2001 on microwave channel 22355.0.<sup>10</sup> Kojo filed three applications for licenses in 2001, all of which were dismissed in 2001 for failure to pay the requisite filing fee.<sup>11</sup> Upon receiving the NOUO, Kojo stated that it ceased operation of the microwave radio station in question and filed for an STA to allow its operation.<sup>12</sup> On March 24, 2005, and on August 9, 2005, San Diego agents returned to the Kojo site and found the microwave radio station operational but now on microwave channel 22471.75 MHz.<sup>13</sup>

4. The San Diego Office also sent Letters of Inquiry (“LOI’s”) to More, Uniradio and Anderson Desk concerning their authority to transmit on the frequencies and at the locations listed above. Each of the entities responded. More acknowledged in its reply, received April 8, 2005, that it began operating its microwave radio station in 2004 on 21675.0 MHz and that it had a license application pending with the Commission. According to Commission records, the application was filed September 2, 2004.<sup>14</sup> In its reply received April 19, 2005, Uniradio acknowledged that it began operating the station on 21225.0 MHz in May 2004 and that it never had or applied for an authorization or license to transmit in the U.S. at the 21225.0 MHz frequency. Uniradio further acknowledged that it had a pending application to use 22464.75 MHz.<sup>15</sup> According to Commission records, this application was filed on May 19, 2004, and amended September 29, 2004, still indicating its desire to use 22464.75 MHz. Uniradio also indicated that the equipment company that installed the radio transmitter had inadvertently switched the receiver and transmitter frequencies, leaving the station operating at 21225.0 MHz rather than at 22464.75 MHz. In its reply, received March 23, 2005, Anderson Desk acknowledged that it began operating its microwave radio station in 2000 on frequency 22461.25 MHz. There is no evidence that Anderson Desk filed an application to operate at that time. Anderson Desk stated that it replaced some defective equipment in December 2004 and, at that time, frequency 21224.0 MHz was installed. Anderson Desk

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<sup>8</sup> *Kojo Worldwide Corporation*, 21 FCC Rcd at 9539, quoting the Kojo NOUO Reply at 2. Neither Kojo nor its counsel presented any written Commission or International Bureau orders, public notices or any other documentation published by the Commission to support these statements.

<sup>9</sup> All of the Petitioners contend that they relied on this advice given to their counsel regarding unlicensed 23 GHz operations. Kojo Application for Review at 3; More Application for Review at 3; Uniradio Application for Review at 4; Anderson Application for Review at 3.

<sup>10</sup> A review of Commission records by the San Diego Office revealed that Kojo had no pending application and had not received authorization to operate on microwave channel 22355.0 MHz.

<sup>11</sup> See FCC File Nos. 000432307, 000477582 and 0000506891.

<sup>12</sup> See Letter Request for Special Temporary Authority from Kojo Worldwide Corporation to International Bureau, FCC, dated December 24, 2004. Kojo provides no evidence that this request was ever granted.

<sup>13</sup> The Commission’s review of its records referenced above, see note 10 *supra*, also indicated that Kojo had a pending application, but no authorization, to operate on microwave channel 22471.75 MHz. The pending application was granted on August 18, 2005, under call sign WQDG466, approximately four years after the unauthorized operations commenced. On June 3, 2007, the WQDG466 license was terminated.

<sup>14</sup> On August 17, 2005, the pending More Enterprises application for a Private Operational Fixed Point-to-Point Microwave radio station on 22471.75 MHz, located at 4630 Border Village Road, San Diego, California, was granted under call sign WQDG363.

<sup>15</sup> Uniradio also stated that it had applied to the FCC for a special temporary authority and that it had corrected the transmitter frequency error. Agents confirmed that Uniradio did apply for a special temporary authority on March 22, 2005. The pending Uniradio application for a Private Operational Fixed Point-to-Point Microwave radio station on 22464.75 MHz, located at 4630 Border Village Road, San Diego, California, was granted on May 18, 2005 under call sign WQCT284, approximately one year after the unauthorized operations commenced.

further stated in response to the LOI that the repaired unit was back in service and operating on 22461.25. According to Commission records, Anderson Desk filed an application on September 23, 2004, to operate on 22461.25 MHz. Anderson Desk acknowledged that its pending application for license had not yet been granted at the time it commenced operations.<sup>16</sup>

5. Section 301 of the Act provides that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio [within the United States] ... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.”<sup>17</sup> On September 28, 2005, the San Diego Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to each of the Petitioners in the amount of \$10,000 for willfully and repeatedly operating a microwave radio station without a license in violation of Section 301 of the Act.<sup>18</sup> Each of the Petitioners responded to its NAL. In their responses, none of the Petitioners claimed that it held a valid authorization to operate a microwave station during the 2004 and 2005 time period that the San Diego Office conducted its investigation, and none of the Petitioners denied operating its microwave radio station repeatedly without a license. Additionally, none of the Petitioners discussed the applications that they had filed in 2004, or why they were filed. None addressed whether they had filed an application in 2000 or 2001. Instead, all the Petitioners argued that they should not be liable for the proposed forfeitures because they were relying on oral advice given to their counsel by Commission staff in 2001, concerning other similarly situated microwave radio operators. Uniradio also argued that the Commission should have issued a public notice announcing its intention to enforce Section 301 against cross-border operators in 2005 and by not doing so it “placed Uniradio in [a] ‘Catch-22’ situation by refusing for years to issue STAs or licenses for microwave links in the 23 GHz band and [indicating] that it would not undertake enforcement actions.”<sup>19</sup>

6. In the *Forfeiture Orders*, the Region found no merit to these arguments and issued forfeitures of \$10,000 against each of the Petitioners. The Region reminded the Petitioners that the Commission had consistently held that applicants are responsible for compliance with the Commission’s Rules and should not rely on informal oral opinions from Commission staff.<sup>20</sup> Consequently, the Region disagreed that Uniradio, which commenced unlicensed 23 GHz operations in May of 2004, was placed in a “Catch-22” by the lack of a public notice announcing that the Commission would enforce Section 301 against unauthorized cross-border microwave operators.<sup>21</sup>

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<sup>16</sup> On May 20, 2005, Anderson’s pending application for a Private Operational Fixed Point-to-Point Microwave radio station on 22461.25 MHz was granted under the call sign of WQCT534.

<sup>17</sup> 47 U.S.C. § 301.

<sup>18</sup> See *Kojo Worldwide Corporation, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200532940005* (Enf. Bur., Western Region, San Diego Office, released September 28, 2005); *More Enterprises Communications Network, Inc., Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200532940008* (Enf. Bur., Western Region, San Diego Office, released September 28, 2005); *Uniradio Corporation Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200532940013* (Enf. Bur., Western Region, San Diego Office, released September 28, 2005); and *Anderson Desk Company, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200532940002* (Enf. Bur., Western Region, San Diego Office, released September 28, 2005).

<sup>19</sup> Uniradio Reply at 4.

<sup>20</sup> *Kojo Forfeiture Order*, 21 FCC Rcd at 9540, para. 12; *More Forfeiture Order*, 21 FCC Rcd at 9550, para. 11; *Uniradio Forfeiture Order*, 21 FCC Rcd at 9995, para. 11; *Anderson Desk Forfeiture Order*, 21 FCC Rcd at 9545, para. 13 (collectively citing *Texas Media Group, Inc.* 5 FCC Rcd 2851, 2852 (1990), *aff’d sub nom.*, *Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991)).

<sup>21</sup> *Uniradio Forfeiture Order*, 21 FCC Rcd at 9995, para. 11.

7. The Region also found that even assuming *arguendo* that Commission staff did advise the Petitioners' counsel in 2001 that there would be no further enforcement actions initiated by field offices regarding unlicensed cross-border 23 GHz systems in 2001, the Petitioners' continued reliance on this advice in 2004 and 2005 was misplaced.<sup>22</sup> While the Petitioners claimed that until 2005, the FCC's microwave licensing branch had steadfastly refused to grant applications seeking cross-border 23 GHz links because the licensing authority in Mexico was not then issuing authorizations for parallel links from Mexico to the U.S, the Region's review of the Commission's database showed otherwise. The Region determined that, by January 2004, cross-border coordination and licensing by both the FCC and the Mexican Ministry of Communications and Transport ("SCT") was routinely occurring.<sup>23</sup> The Region also found that the fact that each of the Petitioners had filed an application for authority to operate in 2004 indicated that each of the Petitioners clearly understood that licensing was both required, and available, for its cross-border operations in 2004 and 2005, the period during which the San Diego Office agents observed and questioned the Petitioners' unauthorized operations.<sup>24</sup>

### III. DISCUSSION

8. In their applications for review, Petitioners effectively repeat the argument they made before the Region that forfeitures for unlicensed operations during the years 2004 to 2005 are inappropriate because petitioners were relying upon oral advice given to their counsel by Commission staff in 2001 that there would be no further enforcement actions for unlicensed cross-border 23 GHz systems.<sup>25</sup> We find no merit to this argument and affirm the Region's finding as to this issue. The Commission has stated in the past that "[i]t is the obligation of interested parties to ascertain facts from Official Commission records and files and not rely on statements or informal opinions by the staff."<sup>26</sup> Additionally, "[w]hen the staff advice is contrary to the Commission's rules, the Commission may still enforce its rules despite any reliance by the public."<sup>27</sup> Regulatees that rely on unwritten staff opinions do so at their own peril. None of the staff has been given delegated authority by the Commission to orally waive the requirements of, or to promise indefinite non-enforcement of, Section 301 of the Act.<sup>28</sup>

9. At the outset, we observe that Petitioners' unlicensed operations were clearly barred by federal statute and FCC rule. As indicated above, Section 301 of the Communications Act requires a license for radio operations: "No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio [within the United States] ... except under and in accordance with

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<sup>22</sup> *Kojo Forfeiture Order*, 21 FCC Rcd at 9540, para. 12; *More Forfeiture Order*, 21 FCC Rcd at 9550, para. 11; *Uniradio Forfeiture Order*, 21 FCC Rcd at 9995, para. 12; *Anderson Desk Forfeiture Order*, 21 FCC Rcd at 9545, para. 13.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Kojo Application for Review at 4* (filed Sept. 22, 2006); *More Application for Review at 4* (filed Sept. 22, 2006); *Uniradio Application for Review at 6* (filed Oct. 12, 2006); *Anderson Desk Application for Review at 4* (filed Sept. 22, 2006).

<sup>26</sup> *Texas Media Group, Inc.* 5 FCC Rcd at 2852. See also *Ramko Distributors, Inc.*, 22 FCC Rcd 7161 (2007) (regulatees are responsible for compliance with the Commission's rules and they should not rely on informal opinions from Commission staff).

<sup>27</sup> *Hinton Telephone Company*, 10 FCC Rcd 11625, 11637 (1995). See also *Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir 1991); *Schweiker v. Hansen*, 450 U.S. 785, 790 (1981) (petitioner's reliance on erroneous staff advice does not estop agency from requiring compliance with valid regulation).

<sup>28</sup> See Section 0.261 of the Rules, 47 C.F.R. § 0.261, Authority Delegated to the International Bureau; Section 0.311 of the Rules, 47 C.F.R. § 0.311, Authority Delegated to the Enforcement Bureau.

this Act and with a license in that behalf granted under the provisions of this Act.<sup>29</sup> In addition, the Commission's rules require a license in order to operate 23 GHz microwave radio systems.<sup>30</sup> Moreover, Petitioners cannot argue that their operations were authorized by rule as a result of the pendency of their various license applications during a portion of the period in question, because the rules providing for conditional authorization (*i.e.*, authority to operate a proposed station during the pendency of a properly filed application) do not apply to the operations at issue here.<sup>31</sup> Finally, Petitioners have failed to cite any statute, official FCC decision, order or policy that affirmatively suspended the licensing requirement for operators of 23 GHz links between the United States and Mexico.

10. In light of these clearly articulated requirements barring the type of unlicensed station operations at issue here, coupled with a lack of any evidence that Congress or the Commission had altered these requirements, we find no merit in Petitioners' assertion that any of the statements made by any member of the FCC staff was "tacitly sanctioned" by the Commission. As for the suggestion that Petitioners were entitled to rely on past instances in which Commission staff may have failed to pursue enforcement action against other 23 GHz operations near the Mexican border, we note, as a threshold matter, that while the Commission is an administrative agency with broad prosecutorial discretion,<sup>32</sup> parties are not entitled to rely on an expectation of the Commission's exercise of such discretion to justify non-compliance with the Act or the Commission's rules.<sup>33</sup> Moreover, even if there were instances where the agency's unofficial actions might mitigate such noncompliance, Petitioners' own description of their understanding of the Commission's enforcement approach towards 23 GHz operations demonstrates the complete lack of any reasonable basis for relying on an expectation that the Commission would not enforce its licensing requirement against them. Specifically, the NOUO issued to Kojo on December 17, 2004, made it clear that the agency was not exercising any discretion to forego enforcement action and put Kojo and the rest of the Petitioners, who were relying on the same counsel for their oral authority to operate without a license, on notice that they would be prohibited from operating without a license. Additionally, the circumstances under which Petitioners allege the representations from the agency were made would suggest that any reliance on them by Petitioners was unreasonable. According to Petitioners' own claims, the alleged representations were made a number of years before the subject operations here, as to parties other than the Petitioners, and at a time when the asserted basis for the lack of enforcement was an international impasse that had ceased to exist during the 2004-2005 time period at issue here.

11. The Petitioners also argue that the person making the assurances was the Deputy Bureau Chief of the International Bureau and, as such, was a policy maker.<sup>34</sup> The Petitioners, citing *AAT*

<sup>29</sup> 47 U.S.C. § 301.

<sup>30</sup> 47 C.F.R. § 101.1 *et seq.*

<sup>31</sup> See 47 C.F.R. § 101.31(b). As noted above, none of Petitioners' proposed stations met the requirement that the station site lie beyond 56.3 kilometers of any international border. See *id.* at § 101.31(b)(v); *supra* note 6.

<sup>32</sup> See *In re: Notices of Apparent Liability for Forfeitures of Emery Telephone*, 15 FCC Rcd 7181, 7186 (1999). The courts have found that, as a general matter, the Commission "is best positioned to weigh the benefits of pursuing an adjudication against the costs to the agency (including financial and opportunity costs) and the likelihood of success." *In the Matter of Radio One Licenses, LLC*, 19 FCC Rcd 23922, 23932 (2004), citing *New York State Dept. of Law v. F.C.C.*, 984 F.2d 1209, 1213 (D.C. Cir. 1993).

<sup>33</sup> See *In the Matter of Cablevision Systems Corporation*, 15 FCC Rcd 24298, 24303-24304 (2000).

<sup>34</sup> Kojo Application for Review at 5 - 6; More Application for Review at 5 - 6; Uniradio Application for Review at 7 - 9; Anderson Application for Review at 5 - 6. Citing Frank C. Newman, *Should Official Advice be Reliable – Proposals as to Estoppel and Related Doctrines in Administrative Law*, 53 Colum. L. Rev 374 (1953), the Petitioners argue that within each agency "there are officials who are distinctly qualified to issue binding rulings." Kojo Application for Review at 5 - 6; More Application for Review at 5 - 6; Uniradio Application for Review at 8; Anderson Application for Review at 4 - 5. The Petitioners do not mention whether these rulings must be written or can be oral. We note our disagreement with the Petitioners' characterization of the alleged actions taken as

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*Electronics Corporation*, assert that the Commission has implied in the past that the public may rely on pronouncements of policy-making staff.<sup>35</sup> Kojo, in particular, asks if a Notice of Unlicensed Operation issued by a field office, in this case the San Diego Office, is effective to countermand an explicit policy announced by a deputy chief of the International Bureau.<sup>36</sup> The Petitioners argue that this Deputy Bureau Chief was “clearly speaking for the Commission” and was articulating “a policy that had been discussed and formulated at the highest levels of the International Bureau.”<sup>37</sup> However, neither the International Bureau nor the Commission can waive Section 301: this agency does not have the authority to waive a statutory requirement.<sup>38</sup> We also disagree with Petitioners’ reading of the *AAT Electronics* decision. That decision, like ours here, rejected a petitioner’s assertion that it was entitled to rely on oral advice by Commission staff that conflicted with the Commission’s published rules.<sup>39</sup> The Commission’s passing observation in *AAT Electronics* that the staff person in question, who purportedly authorized a change in the construction and loading requirements, did not have policy-making authority (“we note that the Bureau employee in question was a staff attorney who did not have policy making authority”) only served to highlight the weakness of AAT’s argument (much as the next point made by the Commission in the case – that AAT failed to cite the purported staff representation when it informed the Commission that it was proceeding to construct in a manner contrary to rule), not to recognize grounds for proving the receipt of an oral waiver.<sup>40</sup>

12. The Petitioners also argue that the Region was incorrect in finding that the fact that each of the Petitioners had filed an application in 2004 to obtain a license for its unlicensed microwave operation meant that each of the Petitioners “clearly understood” that licensing was required. We find no merit to the Petitioners’ argument. The Petitioners do not explain why they filed applications in 2004, other than the fact that they believed that at some point licensing would be required. In this regard, they were partially correct, as Section 301 had always required that their cross-border 23 GHz operations be licensed, whether the Petitioners clearly understood it or not, and regardless of any oral statements made to their counsel or other representatives.

13. We have examined the applications for review pursuant to the statutory factors prescribed by Section 503(b)(2)(E) of the Act and in conjunction with *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,<sup>41</sup> and Section 1.80 of the Rules.<sup>42</sup> Having done so, we find no reason to reverse the Region’s earlier decisions.

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“policymaking.” What the Petitioners have described would not be an establishment of a policy, but an exercise of agency discretion not to pursue a specific enforcement action during a period of international impasse. As explained above, Petitioners were aware that those circumstances had changed, given the end of the international licensing impasse in 2004 and the issuance of the NOUO to Kojo, on December 17, 2004.

<sup>35</sup> See *AAT Electronics Corporation*, 93 FCC 2d 1034, 1047 (1983). In *AAT Electronics*, the Commission found unpersuasive AAT’s contention that it relied on a Bureau official’s representation because, among other reasons, the Bureau employee in question was a staff attorney who did not have policy making authority.

<sup>36</sup> Kojo Application for Review at 7.

<sup>37</sup> *Id.* at 6; More Application for Review at 6; Uniradio Application for Review at 9; Anderson Application for Review at 6.

<sup>38</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order, 15 FCC Rcd 7170, 7178 (1999).

<sup>39</sup> *Application for Review of Specialized Mobile Radio Station WYA-671 Licensed to AAT Electronics Corp., Staten Island, New York*, 53 R.R.2d 1215, para. 47 (1983).

<sup>40</sup> *Id.*

<sup>41</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>42</sup> 47 C.F.R. § 1.80.

Therefore, we deny the applications for review of Kojo Worldwide Corporation, More Enterprises Communications Network, Inc., Uniradio Corporation and Anderson Desk Company, and affirm the Region's *Forfeiture Orders* finding Kojo Worldwide Corporation, More Enterprises Communications Network, Inc., Uniradio Corporation and Anderson Desk Company each liable for a forfeiture in the amount of \$10,000.

#### IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to Section 1.115(g) of the Rules,<sup>43</sup> Kojo Worldwide Corporation's Application for Review of the Region's August 25, 2006, *Forfeiture Order* IS DENIED and the Region's *Forfeiture Order* IS AFFIRMED.

15. IT IS FURTHER ORDERED that, pursuant to Section 1.115(g) of the Rules,<sup>44</sup> More Enterprises Communications Network, Inc.'s Application for Review of the Region's August 25, 2006, *Forfeiture Order* IS DENIED and the Region's *Forfeiture Order* IS AFFIRMED.

16. IT IS FURTHER ORDERED that, pursuant to Section 1.115(g) of the Rules,<sup>45</sup> Uniradio Corporation's Application for Review of the Region's September 12, 2006, *Forfeiture Order* IS DENIED and the Region's *Forfeiture Order* IS AFFIRMED.

17. IT IS FURTHER ORDERED that, pursuant to Section 1.115(g) of the Rules,<sup>46</sup> Anderson Desk Company's Application for Review of the Region's August 25, 2006, *Forfeiture Order* IS DENIED and the Region's *Forfeiture Order* IS AFFIRMED.

18. Payment of the forfeitures ordered by the Region and affirmed by this *Memorandum Opinion and Order* shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>47</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

19. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Kojo Worldwide Corporation, at its address of record, More Enterprises Communications Network, Inc., at its address of record, Uniradio Corporation,

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<sup>43</sup> 47 C.F.R. § 1.115(g).

<sup>44</sup> 47 C.F.R. § 1.115(g).

<sup>45</sup> 47 C.F.R. § 1.115(g).

<sup>46</sup> 47 C.F.R. § 1.115(g).

<sup>47</sup> 47 U.S.C. § 504(a).

at its address of record, Anderson Desk Company, at its address of record, and their counsel of record, Frederick J. Day, Esquire.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary